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Finney & Wilson and W. W. Bird, all of Lebanon, for plaintiff in error.

The Attorney General, for the Commonwealth

POWERS et al. v. HAMILTON.

Sept. 9, 1915.

[86 S. E. 98.]

1. Appeal and Error (§ 692*)—Record—Questions Presented—Admission of Evidence.—Where the bill of exceptions to the refusal of the court to allow a witness to answer a question did not show at what stage of the examination the question was asked, and did not contain enough of the evidence to enable the appellate court to clearly understand the propriety of the ruling, such bill was insufficient to call for consideration.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2905-2909; Dec. Dig. § 692.* 5 Va.-W. Va. Enc. Dig. 375.]

2. Appeal and Error (§ 1058*)—Harmless Error—Exclusion of Evidence Otherwise Elicited.—The action of the trial court, in refusing to permit a witness to answer a question which would have elicited testimony that was otherwise brought out, if erroneous, was harmless.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4195, 4200-4204, 4206; Dec. Dig. § 1058.* 1 Va.-W. Va. Enc. Dig. 559.]

3. Witnesses (§ 275*)—Cross-Examination—Corroboration—Time.—Where a question which the court excluded was propounded to a witness on cross-examination before the defendant had testified, such question was not improperly excluded because its avowed answer would have tended to corroborate testimony of the defendant.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 924, 926, 967-975; Dec. Dig. § 275.* 13 Va.-W. Va. Enc. Dig. 973.]

4. Taxation (§ 569*)—County Treasurer—Deputy—Duty to Collect Tax Tickets—Question of Law.—Where the county treasurer employed a deputy treasurer to collect taxes, whether such deputy bound himself to collect all the tax tickets issued to him was a matter of law, and evidence on such point was inadmissible.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1119-1121; Dec. Dig. § 569.* 13 Va.-W. Va. Enc. Dig. 122.]

5. Taxation (§ 569*)—Officers—Deputy Treasurer—Proceeding to Collect Taxes—Evidence.—In a statutory proceeding by a county treasurer against his deputy and the latter's sureties to recover the amount of certain taxes, on cross-examination, the plaintiff was asked if the defendant deputy bound himself to collect all of the tax tickets placed in his hands, and the court refused to permit the witness to answer, stating the matter was of law. The court permitted defend-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ant's counsel to examine the plaintiff about the terms of his contract with the defendant deputy, and whether or not the latter agreed to collect all the tickets, and in the course of the examination stated that, if there was nothing said about it, the law directed what the deputy should do. Held, that the ruling and the language of the court upon making the ruling were not erroneous, since the rule itself was abstractly correct as a general proposition, while the statement made by the court during plaintiff's cross-examination was sufficient to explain its previous language, and prevent it from resulting in prejudice to the defendant.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1119-1121; Dec. Dig. § 569.* 13 Va.-W. Va. Enc. Dig. 122.]

6. Taxation (§ 569*)—Officers—Deputy Treasurer—Proceeding to Collect Taxes—Evidence.—In a statutory proceeding by a county treasurer against, his deputy to recover taxes and interest, the refusal to allow the deputy to testify that when he settled with the plaintiff's predecessor in office, for whom he had also acted as deputy, such predecessor took back a certain amount in tax tickets and gave him credit for them, which were among those turned over to the present treasurer by his predecessor, and again turned over to the defendant deputy, was not improper, on the ground that the evidence was material to prove the terms of the deputy's contract with the plaintiff treasurer and the character of the tax tickets placed in the defendant deputy's hands by plaintiff treasurer for collection.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1119-1121; Dec. Dig. § 569.* 13 Va.-W. Va. Enc. Dig. 122.]

7. Taxation (§ 569*)—County Officers—Liability of Deputy Treasurer to Treasurer—Statute.—Where a deputy county treasurer failed to collect or to pay over after collection to the treasurer any taxes or levies, such deputy was liable to the treasurer for the amount in a statutory proceeding, under Code 1904, § 854, to collect the same, with damages at the rate of 10 per cent per month from the time such payment should have been made, as provided.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1119-1121; Dec. Dig. § 569.* 13 Va.-W. Va. Enc. Dig. 122.]

8. Taxation (§ 561*)—County Officers—Deputy Treasurer—Duty.—It was the duty of a deputy of a county treasurer to collect all tax tickets, which were not returned delinquent, placed in his hands for collection, and to account to the treasurer therefor.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1083-1090; Dec. Dig. § 561.* 13 Va.-W. Va. Enc. Dig. 122.]

9. Taxation (§ 569*)—Officers—Deputy Treasurer—Treasurer's Action against for Taxes—Burden of Proof.—The burden of proof was on a deputy county treasurer and his sureties to prove by a pre-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ponderance of evidence, in the county treasurer's statutory proceeding to collect uncollected taxes and levies, that such deputy treasurer had an agreement with the treasurer whereby the latter should take back all uncollected tax tickets and give the deputy credit therefor.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1119-1121; Dec. Dig. § 569.* 13 Va.-W. Va. Enc. Dig. 122.]

10. Taxation (§ 561*)—Offices—County Treasurer and Deputy.—Where a deputy county treasurer and the treasurer contracted that the latter should pay the deputy for collecting tax tickets, and should take back uncollected tickets at the termination of the work, upon the deputy's paying the treasurer part of the amount due as taxes, and returning tax tickets for the balance, such treasurer could not recover from such deputy the amount covered by the returned tickets.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1083-1090; Dec. Dig. § 561.* 13 Va.-W. Va. Enc. Dig. 122.]

11. Contracts (§ 131*)—Illegality—Contracts Inducing Negligence in Public Officials—"Public Officer."—A contract tending to induce negligence in a "public officer," which a deputy county treasurer is, is illegal and void, as contrary to public policy.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 594-607; Dec. Dig. § 131.* 7 Va.-W. Va. Enc. Dig. 250.]

For other definitions, see Words and Phrases, First and Second Series, Officers.]

12. Taxation (§ 569*)—Deputy Treasurer—Summary Proceeding on Bond—Review—Amendment of Judgment.—Code 1904, § 854, provides that if any deputy county treasurer shall fail to collect taxes, or, having collected, fail to pay over to his principal, he and his sureties shall be liable for the deficiency, with damages at the rate of 10 per cent per month from the time such payment should have been made. Section 3452 provides that, when on an appeal it appears that the judgment should be amended, the court may do so and affirm. Held, that where, in a proceeding by a county treasurer against his deputy to recover taxes, levies, and interest, the verdict was for the plaintiff "in the sum of \$305.55, with damages thereon at the rate of 10 per cent per month from January 1, 1912," the judgment will be amended to include the damages at the rate of 10 per cent up to the date of the verdict, and the amount thus resulting as principal will bear interest at the rate of 6 per cent until paid.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1119-1121; Dec. Dig. § 569.* 13 Va.-W. Va. Enc. Dig. 122.]

Error to Circuit Court, Wise County.

Statutory proceeding by R. P. Hamilton against J. W. Pow-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ers and others. Judgment for plaintiff, and defendants bring error. Amended and affirmed.

Bond & Bruce, of Wise, for plaintiffs in error.

Vicars & Peery, of Wise, for defendant in error.

SIPE et al. v. ALLEY.

Sept. 9, 1915.

[86 S. E. 122.]

1. Easements (§ 17*)—Sale with Reference to Plat.—Where lands are laid off into lots, streets, and alleys, and a map or plat thereof recorded, all lots sold by reference thereto carry with them the right to the use of the easement in such streets and alleys necessary to the enjoyment and value of the lots.

[Ed. Note.—For other cases, see Easements, Cent. Dig. §§ 45-49; Dec. Dig. § 17.* 4 Va.-W. Va. Enc. Dig. 855.]

2. Dedication (§ 19*)—Acts Constituting—Recordation of Plat.—Under Code 1904, § 2510a, providing for the subdivision of land into lots and for the recordation of the plat thereof, and that the recording of such plat shall create a public easement over the premises set apart for streets, where such a plat is recorded and lots sold in reference thereto, the streets and alleys therein are dedicated, not only to the use of the purchasers, but to the use of the public generally.

[Ed. Note.—For other cases, see Dedication, Cent. Dig. §§ 35, 37-47; Dec. Dig. § 19.* 4 Va.-W. Va. Enc. Dig. 359.]

3. Dedication (§ 63*)—Streets—Abandonment—Burden of Proof.—When a street has been dedicated, the burden of showing a discontinuance, vacation, or abandonment thereof is upon the party asserting it.

[Ed. Note.—For other cases, see Dedication, Cent. Dig. §§ 103-106; Dec. Dig. § 63.* 4 Va.-W. Va. Enc. Dig. 360.]

4. Municipal Corporations (§ 657*)—Streets—"Abandonment"—Delay in Opening Street.—Delay in opening a street is not an abandonment thereof, except so far as statutory or charter provisions fix a rule to the contrary.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. §§ 722, 844, 1429, 1496; Dec. Dig. § 657.* 12 Va.-W. Va. Enc. Dig. 953.]

5. Municipal Corporations (§ 657*)—Streets—"Abandonment"—Nonuser.—A mere nonuser of a portion of a street fenced in with abutting property is not an abandonment of the street by the public.

[Ed. Note.—For other cases, see Municipal Corporations, Cent.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.